

1 BEFORE THE DIRECTOR
2 DEPARTMENT OF CONSUMER AFFAIRS
3 BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
4 STATE OF CALIFORNIA

5 In the Matter of the Accusation and
6 Petition to Revoke Probation Against:

Case No. T-1137

7 MARK ALAN REILLY
8 2808 Shearwater Way
9 Fairfield, CA 94533

OAH No. 2008060765

10 Psychiatric Nurse License No.
11 PT 31300

Respondent.

12 DECISION

13
14 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
15 Director of the Department of Consumer Affairs¹ as the final Decision in the above-entitled matter.
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18 This Decision shall become effective on January 28, 2009.

19 IT IS SO ORDERED this 12th day of December, 2008.

20
21
22 *P. J. Harris*

23 PATRICIA HARRIS

24 Deputy Director, Board/Bureau Support
25 Department of Consumer Affairs

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28 ¹Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition
to Revoke Probation Against:

MARK ALAN REILLY,

Psychiatric Technician License
No. PT 31300,

Respondent.

Case No. T-1137

OAH No. 2008060765

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 10, 2008, at Oakland, California.

Justin R. Surber, Deputy Attorney General, represented Complainant Teresa Bello-Jones, J.D., M.S.N., R.N.

Steven Bassoff, Attorney at Law, represented Respondent Mark Alan Reilly, who was present.

The record closed on September 10, 2008.

FACTUAL FINDINGS

1. Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., filed the Accusation in her official capacity as Executive Officer, Bureau of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Bureau).

2. The Board of Vocational Nursing and Psychiatric Technicians (Board)¹ issued Psychiatric Technician License No. PT 31300 to Mark Alan Reilly (Respondent) on May 13, 2002. It is active and renewed through May 31, 2009.

3. Effective January 18, 2006, the Board revoked Respondent's license, but stayed the revocation and placed the license on probation for three years. The action was taken pursuant to a stipulated settlement. The basis for the action was Respondent's 2004 conviction for driving under the influence of alcohol and the terms of the Board's probation order included alcohol and drug conditions. He was also ordered to obey all laws.

4. Pursuant to the 2004 criminal case, Respondent was placed on criminal probation for three years. He was arrested twice for violating criminal probation. On May 6, 2005, police officers went to his home because a vehicle that was registered to him had been involved in a hit-and-run accident. He displayed signs of intoxication and a breath test revealed a blood alcohol level of 0.187/.185 percent. On September 18, 2005, Respondent called the police to report that he was depressed and wanted to kill himself. Police officers drove him to a crisis center, but he was refused help because he was intoxicated. A test revealed a blood alcohol level of 0.179/.178 percent.

5. The Board was aware of the two arrests in 2005 prior to the effective date of its 2006 decision. According to the probation monitor, no action was taken as the arrests were not felt to be serious enough either to support a new disciplinary action or to cancel the decision. It was hoped that Board probation would be sufficient to support Respondent's sobriety and to avoid reoccurrences. The probation monitor gave Respondent an instruction sheet regarding screening programs so that he could comply with the condition of submitting biological fluid samples. But the monitor chose not to enforce that condition due to workload constraints.

6. On May 24, 2007, in the Napa County Superior Court, Respondent was convicted, by his plea of no contest, of a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol. Respondent was placed on formal probation for five years pursuant to terms and conditions that included paying fines and fees, completing a multiple-offender drinking-driver program within two years and serving 10 days in county jail. Respondent also admitted that he violated a previous criminal probation order, and was sentenced to serve 30 days for the probation violation, concurrent with the 10 days ordered for the new offense.

7. Respondent's 2007 conviction and probation revocation resulted from his conduct on February 12, 2007. On that date, he was very depressed due to illness in his family. He estimates that he drank six beers. Respondent then got into his car, drove a short way from his home and hit a rock wall. Respondent did not report the accident. He walked home, got on his motorcycle, and set out again. Respondent struck an unoccupied parked

¹On July 1, 2008, the Board of Vocational Nursing and Psychiatric Technicians was replaced by the Bureau of Vocational Nursing and Psychiatric Technicians.

vehicle. He was hospitalized with a fractured right leg. Officers observed numerous signs of intoxication both at the scene and at the hospital. A blood test was administered that revealed Respondent's blood alcohol level to be above the legal limit.

8. The conditions of Respondent's Board probation included a requirement that he file quarterly reports with the Board. Arrests or convictions that occur during the reporting period are required to be disclosed on the reporting form. On the form he signed July 5, 2007, Respondent revealed that he had both been arrested for and convicted of a crime during the April through June reporting period.

9. At the time of Respondent's 2007 arrest, he had been sober for two years, was attending Alcoholics Anonymous meetings twice a week, and had a sponsor. But he has struggled with alcohol abuse since he was a teenager, using it to deal with chronic depression, and he relapsed.

10. Respondent is in compliance with the criminal probation order. Respondent represents that he is no longer on formal probation; it has been reduced to summary probation and he is in compliance with its terms.

11. Respondent has been treated by mental health professionals over the years and has taken a variety of anti-depressant medications. After the 2007 arrest, he saw a therapist for a time. Respondent currently takes Celexa. He finds this "helps mellow [him] out," to the point that he is "never too happy or too sad."

12. Respondent has been a psychiatric technician for six years at Napa State Hospital. Previously, he worked there as a janitor. Respondent currently works from 2:30 p.m. to 11:15 p.m., in a low-function all-male unit. He represents that he has had no problems at all at work due to drinking or depression, despite the fact that he is regularly physically assaulted by clients.

13. In the fall of 2007 Respondent married. His wife is also a psychiatric technician at Napa State Hospital. Respondent now has two step-children, ages 10 and 12. His new family represents a big change in his life. The thought of losing his job keeps him sober, as does going to AA meetings.

14. Respondent's wife, Mariafe Young, testified on his behalf. She has not seen him consume alcohol since they married.

Cost Recovery

15. Complainant incurred attorney's fees and costs totaling \$5,895.75 for the investigation and prosecution of this matter through August 29, 2008. This amount was documented by billing records attached to the declaration of Deputy Attorney General Justin Surber executed September 8, 2008.

Mr. Surber also wrote in his declaration "In addition to the time set forth above, it is my good faith estimate that the following hours *were or will be* billed to the Bureau . . . for the further preparation of the case up to the commencement of the hearing." (Emphasis added.) He then adds the additional sum of \$1,264 to the amount previously identified as having been billed, for a final total of \$7,159.75. The equivocation in the estimate of hours prevents a finding of reasonableness as to that amount.

The total of \$5,895.75 was incurred and is found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4521, subdivision (a)(5), provides for license discipline when a licensed psychiatric technician has used alcoholic beverages to an extent or in a manner dangerous or injurious to the licensee or to the public. California Code of Regulations, title 16, section 2576.6, subdivision (b)(6), requires that licensees abstain from substance abuse. Respondent's conviction for drinking and driving evidences the use of alcohol in a dangerous manner. Cause for license discipline therefore exists pursuant to these provisions by reason of the matters set forth in Findings 3, 4, 6, and 7.

2. Business and Professions Code sections 490 and 4521, subdivision (f), provide for license discipline when a licensee has been convicted of a substantially related crime. Respondent was convicted of driving with an illegally high blood alcohol level. California Code of Regulations, title 16, section 2578, contains criteria to be considered when determining whether a crime is substantially related to the qualifications, functions, or duties of a psychiatric technician. The criteria include crimes that evidence unfitness to perform in a manner consistent with the public health, safety, or welfare. Driving under the influence of alcohol reflects a lack of proper judgment and is an act that endangers the public safety. It is therefore a substantially related crime under the criteria. Cause for license discipline therefore exists by reason of the matters set forth in Findings 3 and 6.

3. Business and Professions Code section 4521, subdivision (a)(1), provides for license discipline when a licensee fails to report the commission of an act that is prohibited by that section. Complainant alleges that Respondent violated this section by failing to report his 2007 arrest and conviction to the Board. Respondent, however, did report the arrest and conviction (Finding 8) and therefore cause for license discipline does not exist pursuant to this section.

4. Condition no. 1 of Respondent's Board probation requires that he obey all laws. Respondent violated this condition in that he was convicted of a crime. (Finding 6.)

5. Condition no. 15 of Respondent's Board probation requires that he abstain from the use of alcoholic beverages. Respondent violated this condition by drinking alcohol. (Findings 6 and 7.)

6. Business and Professions Code section 125.3 provides that a licensee found to have committed a violation of the licensing law may be ordered to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. Cause exists to require Respondent to pay costs in the amount of \$5,895.75 by reason of the matters set forth in Finding 15.

Discussion

7. Respondent has long suffered from depression and alcoholism, two very intractable conditions. This matter arose from Respondent's relapse during a difficult time. Since then, he has renewed his commitment to sobriety. His life has changed in a major way in that he is now married and has a family to care for. Respondent's first attempt at Board probation did not succeed, but neither were all of the tools fully employed. Revocation would be too severe a result in these circumstances. There exists sufficient evidence of rehabilitation to support the issuance of a new probationary license upon appropriate terms and conditions. Respondent is advised to carefully comply with all of the conditions.

ORDER

The previous order staying revocation of Psychiatric Technician License No. PT 31300, issued to Mark Alan Reilly, is vacated and the license is revoked; however, the revocation is stayed and a probationary license shall be issued for three years, subject to the following terms and conditions:

1. Obey All Laws -- Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Bureau within five days of occurrence. To ensure compliance with this term, Respondent shall submit two completed fingerprint cards and the applicable fingerprint processing fees to the Bureau within thirty days of the effective date of the Decision, unless the Bureau determines that fingerprint cards were previously submitted by Respondent.
2. Compliance with Probation Program and Quarterly Report Requirements -- Respondent shall fully comply with terms and conditions of the probation established by the Bureau and shall cooperate with the representatives of the Bureau in its monitoring and investigation of Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Bureau. The reports shall certify and document compliance with all the conditions of probation.

3. Notification of Address and Telephone Number Change(s) – Respondent shall notify the Bureau, in writing, within five days of a change of residence or mailing address, of his new address and any change in his work and/or home telephone numbers.
4. Notification of Residency or Practice Outside of State – Respondent shall notify the Bureau, in writing, within five days, if he leaves California to reside or practice in another state.

Respondent shall notify the Bureau, in writing, within five days, upon his return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

5. Notification to Employer(s) – When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of Respondent's license. This notification to Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his probationary status with the Bureau prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Bureau's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Bureau. The reports shall be on a form provided by the Bureau, shall include a performance evaluation and such other information as may be required by the Bureau.

Respondent shall notify the Bureau, in writing, within five days of any change in employment status. Respondent shall notify the Bureau, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. Interviews/Meetings with Bureau Representative(s) – Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Bureau, or its designated representatives.

7. Employment Requirements and Limitations – During probation, Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six continuous months and of no less than twenty hours per week.

While on probation, Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Bureau approved continuing education course except as approved, in writing, by the Bureau. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Bureau.

8. Supervision Requirements – Respondent shall obtain prior approval from the Bureau, before commencing any employment, regarding the level of supervision provided to Respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Bureau.

9. Completion of Educational Course(s) – Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violations no later than the end of the first year of probation; or Respondent shall be suspended from practice, until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Bureau shall notify Respondent of the course content and number of contact hours required. Within thirty days of the Bureau's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Bureau within thirty days of course completion.

10. Maintenance of Valid License – Respondent shall, at all times while on probation, maintain an active current license with the Bureau, including any period during which suspension or probation is tolled.

Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

- i1. Cost Recovery Requirements – Respondent is ordered to reimburse the Bureau for its costs in the amount of \$5,895.75. In the prior case, Respondent was ordered to pay costs of \$2,645.50. The total amount shall be \$5,895.75 plus any amount left unpaid of the previous cost recovery order. Payments shall be timely made pursuant to a plan arranged with the Bureau or its designee. Failure to make payments in accordance with any formal agreement entered into with the Bureau or pursuant to any Decision by the Bureau shall be considered a violation of probation.

The Bureau may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. Respondent shall enter into a formal agreement with the Bureau to reimburse the unpaid costs within that one-year period.

Except as provided above, the Bureau shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation – If Respondent violates the conditions of his probation, the Bureau after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, Respondent's license will be fully restored.

13. Psychological Evaluation – Within sixty days of the effective date of the Decision, Respondent shall submit to a psychiatric or psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board-certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining Respondent's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Bureau's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by Respondent.

Respondent shall cause the evaluator to submit to the Bureau a written psychological report concerning Respondent's status and progress as well as

such other information as may be requested by the Bureau. This report shall be submitted within ninety days from the effective date of the Decision.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Bureau, in writing, within five working days. The Bureau shall notify Respondent in writing of the evaluator's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Bureau is satisfied of Respondent's fitness to practice safely and has so notified Respondent. Respondent shall document compliance in the manner required by the Bureau.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Bureau's discretion. Cost of such therapy shall be paid by Respondent.

14. Rehabilitation Program – If deemed necessary by the Bureau or its designee, within thirty days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program by the Bureau. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Bureau.

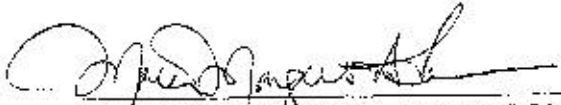
Components of the treatment contract shall be relevant to the violation and to Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by Respondent.

15. Chemical Dependency Support/Recovery Groups – While on probation, Respondent shall continue attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

16. Abstain from Alcohol and Controlled Substances – Respondent shall completely abstain from alcohol and the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

17. Submit Biological Fluid Samples – Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Bureau or its designee. There will be no confidentiality in test results: positive test results will be immediately reported to the Bureau and Respondent's current employer.

DATED: September 29, 2008



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

MAY 07 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

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8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **MARK ALAN REILLY**
2808 Shearwater Way
14 Fairfield, CA 94533

15 Psychiatric Technician License No. PT 31300

16 Respondent.

Case No. T-1137

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation and Petition to Revoke Probation solely in her official capacity as the Executive
22 Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of
23 Consumer Affairs.

24 2. On or about May 13, 2002, the Board of Vocational Nursing and
25 Psychiatric Technicians issued Psychiatric Technician License Number PT 31300 to Mark Alan
26 Reilly (Respondent). The Psychiatric Technician License was in effect at all times relevant to the
27 charges brought herein and will expire on May 31, 2009, unless renewed.

28 ///

3. In a disciplinary action entitled "In the Matter of Accusation Against Mark Alan Reilly," Case No. T-1137, the Board of Vocational Nursing and Psychiatric Technicians ("Board") and Mark Alan Reilly entered into a Stipulated Settlement and Disciplinary Order, effective January 18, 2006, in which Respondent's Psychiatric Technician License was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that Stipulated Settlement and Disciplinary Order is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 4545 of the Code, the Board may renew an expired license at any time within four years after the expiration.

6. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of

1 a subsequent order under the provisions of Section 1203.4 of the Penal Code.”

2 7. **Section 4520** of the Code provides, in pertinent part, that the Board may
3 discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with
4 section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

5 8. **Section 4521** of the Code states:

6 "The board may suspend or revoke a license issued under this chapter [the Psychiatric
7 Technicians Law (Bus. & Prof Code, 4500, et seq.)) for any of the following reasons:

8 "(a) Unprofessional conduct, which includes but is not limited to any of the
9 following:

10 ...(5) Use any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022,
12 or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any
13 other person, or the public or to the extent that the use impairs his or her ability to conduct with
14 safety to the public the practice authorized by his or her license.

15 ...(f) Conviction of any offense substantially related to the qualifications, functions,
16 and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive
17 evidence of the conviction. The board may inquire into the circumstances surrounding the
18 commission of the crime in order to fix the degree of discipline.

19 ...(l) Failure to report the commission of any act prohibited by this section.

20 9. **California Code of Regulations, title 16, section 2576.6(b)(4)** states:

21 "A licensed psychiatric technician shall adhere to standards of the profession and shall
22 incorporate ethical and behavioral standards of professional practice which include but are not
23 limited to the following:

24 ...(4) Abstaining from chemical/substance abuse.”

25 10. **California Code of Regulations, title 16, section 2578** states:

26 "For the purposes of denial, suspension, or revocation of a license pursuant to
27 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act
28 shall be considered to be substantially related to the qualifications, functions or duties of a licensed

1 psychiatric technician if to a substantial degree it evidences present or potential unfitness of a
2 licensed psychiatric technician to perform the functions authorized by his license in a manner
3 consistent with the public health, safety, or welfare.

4 5 COSTS

6 11. Section 125.3 of the Code provides, in pertinent part, that a Board may
7 request the administrative law judge to direct a licensee found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 11 FACTUAL BACKGROUND

12 12. On or about December 22, 2004, before the Napa County Superior Court,
13 Case No. CR121413, Respondent was convicted on his plea of guilty of violating Vehicle Code
14 section 23152(a), driving while under the influence of an alcoholic beverage or drug. Respondent
15 was detained by the Napa County Sheriff's Department for driving approximately 70 mph in a
16 40 mph zone. Respondent submitted to a field sobriety test and a provided officers with breath
17 samples for alcohol screening. The alcohol screening indicated that Respondent's blood alcohol
18 level registered at or between .114% and .117%. Respondent was placed on five years probation.

19 13. On or about May 5, 2005, Respondent was arrested for violation of
20 probation. The circumstances are as follows:

21 a. Respondent was contacted by Napa Police regarding a hit and run
22 accident involving a vehicle registered to Respondent. Respondent displayed signs of
23 intoxication including slurred speech, unsteady gait, and strong odor of alcoholic beverage.
24 Respondent submitted to Preliminary Alcohol Screening test that resulted in a blood alcohol
25 level of .187% and .185%. Respondent later submitted to breath test which resulted in a blood
26 alcohol level of .18% and .17%.

27 14. On or about June 9, 2005, the Board filed an Accusation against
28 Respondent entitled "In the Matter of Accusation Against Mark Alan Reilly," Case No. T-1137.

Respondent's December 22, 2004 conviction formed the basis for Accusation Case No. T-1137.

15. On or about September 18, 2005, Respondent was arrested for violating his probation. The circumstances are as follows:

a. Respondent contacted Napa Police claiming to be depressed and suicidal. Respondent had the odor of alcoholic beverages on his breath. Respondent submitted to Preliminary Alcohol Screening that resulted in a blood alcohol levels of .179% and 178%.

16. On or about September 20, 2005, Napa County Superior Court released Respondent on his own recognizance and bail with certain terms and conditions that required Respondent to abstain from drinking alcoholic beverages and attend 90 AA meetings in 90 days.

17. The Board and Mark Alan Reilly entered into a Stipulated Settlement and Disciplinary Order in "In the Matter of Accusation Against Mark Alan Reilly," Case No. T-1137. The Stipulated Settlement and Disciplinary Order became effective January 18, 2006. Respondent's Psychiatric Technician License was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that Stipulated Settlement and Disciplinary Order is attached as Exhibit A and is incorporated by reference.

18. The Stipulated Settlement and Disciplinary Order in "In the Matter of Accusation Against Mark Alan Reilly," Case No. T-1137 concerned only the December 22, 2004 conviction. When case No T-1137 settled the Board was unaware that Respondent had violated his criminal probation on May 6, 2005 and September 18, 2005.

19. On or about May 24, 2007, before the Napa County Superior Court, Case No. CR135295, Respondent was convicted on a plea of no contest of violating Vehicle Code Section 23152(a), driving while under the influence of any alcoholic beverage. Respondent was sentenced to serve ten days in jail.

20. On or about May 24, 2007, before the Napa County Superior Court, Case No. CR121413, Respondent admitted he violated the terms of his probation. Respondent's probation was revoked and reinstated with additional terms. Respondent was sentenced to serve thirty days in jail concurrently with the sentence imposed in Case No. CR135295.

1 21. The circumstances leading to the probation violation and conviction in
2 Napa County Superior Court, Cases No. CR121413 and CR135295 and are as follows:

3 a. On or about February 12, 2007, at approximately 9:51 a.m., Napa
4 Police were dispatched to the scene of a collision. A vehicle registered to Respondent was driven
5 off the road and into a rock wall. The driver of that vehicle left the scene of the accident. At
6 approximately 10:23 a.m. Napa Police were dispatched to a second accident. Respondent was
7 one of the drivers involved in the second accident. Respondent admitted to being the driver of
8 the vehicle that ran into the rock wall. Respondent submitted to an alcohol screening that
9 revealed that Respondent's blood alcohol level was .14%.

10
11 **OTHER MATTERS**

12 22. Respondent has a history of arrests and/or convictions as follows:

13 a. On or about July 26, 1979, in Long Beach, California, Respondent was
14 detained and later arrested by police officers for violating California Vehicle Code section
15 23102a (driving under the influence) and Vehicle Code section 20002a (misdemeanor hit and
16 run). No conviction records are available at this time.

17 b. On or about February 21, 1985, Respondent was convicted on his plea of guilty
18 to the violation of Penal Code section 12031(a) (brandishing a weapon in a rude and threatening
19 manner) in Court Case No. M212224, Long Beach Criminal Court.

20 c. On or about July 27, 1989, Respondent was convicted on his plea of nolo
21 contendere for the misdemeanor violation of Penal Code section 245(a)(1) (assault with a deadly
22 weapon) in Long Beach Criminal Court Case No. 19460/89M05380.

23 23. On or about February 26, 2002, in response to an agency license
24 application review, Respondent wrote to the Board to explain his past arrests and/or conviction
25 history. In that letter, he admitted that he "used to drink alcoholically" and that his "troubled
26 past stems from that."

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 24. Respondent is subject to disciplinary action under sections 4521(a) of the
4 Code for unprofessional conduct. The circumstances regarding Respondent's unprofessional
5 conduct are set forth in paragraphs 13, 15, 19-21, above.
6

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Substantial Relationship)

9 25. Respondent is subject to disciplinary action under sections 490 and 4521(f)
10 of the Code, and California Code of Regulations, title 16, section 2578, in that Respondent's
11 conviction for driving under the influence is substantially related to the qualifications, functions or
12 duties of a licensed psychiatric technician. The circumstances of Respondent's conviction are set
13 forth in paragraphs 19-21, above.
14

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct - Dangerous Use of Alcohol)

17 26. Respondent is subject to disciplinary action under section 4521(a)(5) of the
18 Code, use of alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any
19 other person or the public at large. Respondent was drinking to the point of being suicidal as set
20 forth in paragraph No.15. Respondent repeatedly drove under the influence of alcohol and was
21 involved in three separate accidents as set forth in paragraphs No. 13 and 21 above.
22

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct - Alcohol Abuse)

25 27. Respondent is subject to disciplinary action for the violation of California
26 Code of Regulations, title 16, section 2576.6(b)(4), in that Respondent failed to abstain from
27 chemical/substance abuse, as set forth in paragraphs 13, 15, and 21, above.
28

///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Failure to Report)

3 28. Respondent is subject to disciplinary action under section 4521(1) of the Code,
4 in that Respondent failed to report to the board his actions and convictions as set forth in paragraphs
5 19-21, above.

6
7 **FIRST CAUSE TO REVOKE PROBATION**

8 (Failure to Obey All Laws)

9 29. At all times after the effective date of Respondent's probation, Condition 1
10 stated:

11 **Obey All Laws.** Respondent shall obey all federal, state and local laws, including
12 all statutes and regulations governing the license. Respondent shall submit, in
13 writing, a full and detailed account of any and all violations of the law to the Board
14 within five (5) days of occurrence. To ensure compliance with this term, respondent
15 shall submit two (2) completed fingerprint cards and the applicable fingerprint
16 processing fees to the Board within thirty (30) days of the effective date of the
17 decision, unless the Board determines that fingerprint cards were already submitted
18 by the Respondent as part of his/her licensure application process effective July 1,
19 1996. Respondent shall also submit a recent 2" x 2" photograph of himself/herself
20 within thirty (30) days of the effective date of the decision.

21 30. Respondent's probation is subject to revocation because he failed to comply
22 with Probation Condition 1, referenced above. Respondent has failed to obey all laws as set forth
23 in paragraph 21, above.

24 **SECOND CAUSE TO REVOKE PROBATION**

25 (Failure to Abstain From Using Alcohol)

26 31. At all times after the effective date of Respondent's probation, Condition 15
27 stated:

28 **Abstain From Use of Alcohol.** Respondent shall completely abstain from the use
of alcoholic beverages during the period of probation.

32. Respondent's probation is subject to revocation because he failed to comply
with Probation Condition 15, referenced above. Respondent used alcohol as set forth in paragraph

21, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking the probation that was granted by the Board of Vocational Nursing and Psychiatric Technicians in Case No. T-1137 and imposing the disciplinary order that was stayed thereby revoking Psychiatric Technician License No. PT 31300 issued to Mark Alan Reilly;

2. Revoking or suspending Psychiatric Technician License No. PT 31300, issued to Mark Alan Reilly;

3. Ordering Mark Alan Reilly to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: May 7, 2008.



TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant

Exhibit A

Decision and Order

Board of Vocational Nursing and Psychiatric Technicians Case No. T-1137

1 BILL LOCKYER, Attorney General
of the State of California
2 HANNAH HIRSCH ROSE, State Bar No. 56276
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5515
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 MARK ALAN REILLY
13 51 Winding Way
14 Napa, California 94559

15 Psychiatric Technician
License No. PT 31300

16 Respondent.

Case No. T-1137

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer (Complainant)
22 is the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians. She
23 brought this action solely in her official capacity and is represented in this matter by Bill
24 Lockyer, Attorney General of the State of California, by Hannah Hirsch Rose, Deputy Attorney
25 General, and assisted by Lydia Zane, Senior Legal Analyst.

26 2. Respondent Mark Alan Reilly (Respondent) is represented in this
27 proceeding by attorney Steven Bassoff, whose address is California Association of Psychiatric
28 Technicians, Sacramento Headquarters, 2000 "O" Street, Suite 250, Sacramento, CA 95814.

1 3. On or about May 13, 2002, the Board of Vocational Nursing and
2 Psychiatric Technicians issued Psychiatric Technician's License No. PT 31300 to Mark Alan
3 Reilly (Respondent). The license was in full force and effect at all times relevant to the charges
4 brought in Accusation No. T-1137 and will expire on May 31, 2007, unless renewed.

5 JURISDICTION

6 4. Accusation No. T-1137 was filed before the Board of Vocational Nursing
7 and Psychiatric Technicians (Board), Department of Consumer Affairs, and is currently pending
8 against Respondent. The Accusation and all other statutorily required documents were properly
9 served on Respondent on June 9, 2005. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. T-1137 is attached as Exhibit A and
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. T-1137. Respondent has also
15 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
16 Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 CULPABILITY

27 8. Respondent admits the truth of each and every charge and allegation in
28 Accusation No. T-113.

1 9. Respondent agrees that his Psychiatric Technician's License is subject to
2 discipline and he agrees to be bound by the Board of Vocational Nursing and Psychiatric
3 Technicians (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

4 CIRCUMSTANCES IN MITIGATION

5 10. Respondent Mark Alan Reilly was licensed with a "Notice of Warning" for
6 his criminal history prior to licensure. The Board's settlement position is based upon the length
7 of time that has passed between Respondent's prior convictions and Respondent's latest
8 conviction, Respondent's compliance with criminal orders and other evidence submitted by
9 Respondent in mitigation. Respondent admitted responsibility at an early stage in these
10 proceedings.

11 RESERVATION

12 11. The admissions made by Respondent herein are only for the purposes of
13 this proceeding, or any other proceedings in which the Board of Vocational Nursing and
14 Psychiatric Technicians or other professional licensing agency is involved, and shall not be
15 admissible in any other criminal or civil proceeding.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Board of Vocational
18 Nursing and Psychiatric Technicians. Respondent understands and agrees that counsel for
19 Complainant and the staff of the Board of Vocational Nursing and Psychiatric Technicians may
20 communicate directly with the Board regarding this stipulation and settlement, without notice to
21 or participation by Respondent or his counsel. By signing the stipulation, Respondent
22 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
23 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
24 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force
25 or effect, except for this paragraph, it shall be inadmissible in any legal action between the
26 parties, and the Board shall not be disqualified from further action by having considered this
27 matter.

28 13. The parties understand and agree that facsimile copies of this Stipulated

1 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
2 force and effect as the originals.

3 14. In consideration of the foregoing admissions and stipulations, the parties
4 agree that the Board may, without further notice or formal proceeding, issue and enter the
5 following Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Psychiatric Technician License No. PT 31300,
8 issued to Respondent Mark Alan Reilly (Respondent), is revoked. However, the revocation is
9 stayed and Respondent is placed on probation for three (3) years on the following terms and
10 conditions.

11 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws,
12 including all statutes and regulations governing the license. Respondent shall submit, in writing,
13 a full and detailed account of any and all violations of the law to the Board within five (5) days of
14 occurrence. To ensure compliance with this term, respondent shall submit two (2) completed
15 fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30)
16 days of the effective date of the decision, unless the Board determines that fingerprint cards were
17 already submitted by Respondent as part of his licensure application process effective July 1,
18 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30)
19 days of the effective date of the decision.

20 2. **Compliance With Probation Program And Quarterly Report**
21 **Requirements.** Respondent shall fully comply with terms and conditions of the probation
22 established by the Board and shall cooperate with the representatives of the Board in its
23 monitoring and investigation of the Respondent's compliance with the Probation Program.

24 Respondent shall submit quarterly reports, under penalty of perjury, in a form
25 required by the Board. The reports shall certify and document compliance with all the conditions
26 of probation.

27 3. **Notification of Address And Telephone Number Change(s).**
28 Respondent shall notify the Board, in writing, within five (5) days of a change of residence or

mailing address, of his new address and any change in his work and/or home telephone numbers.

4. **Notification of Residency or Practice Outside of State.** Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five (5) days, upon his return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

5. **Notification to Employer(s).** When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. **Interviews/meetings With Board Representative(s).** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the

1 Board, or its designated representatives.

2 7. **Employment Requirements And Limitations.** During probation,
3 Respondent shall work in his licensed capacity in the State of California. This practice shall
4 consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

5 While on probation, Respondent shall not work for a nurses' registry or in any
6 private duty position, a temporary nurse placement agency, as a faculty member in an accredited
7 or approved school of nursing, or as an instructor in a Board approved continuing education
8 course except as approved, in writing, by the Board. Respondent shall work only on a regularly
9 assigned, identified and predetermined work site(s) and shall not work in a float capacity except
10 as approved, in writing, by the Board.

11 8. **Supervision Requirements.** Respondent shall obtain prior approval from
12 the Board, before commencing any employment, regarding the level of supervision provided to
13 Respondent while employed as a licensed vocational nurse or psychiatric technician.

14 Respondent shall not function as a charge nurse (i.e., work in any healthcare
15 setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians,
16 certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric
17 technician during the period of probation except as approved, in writing, by the Board.

18 9. **Completion of Educational Course(s).** Respondent, at his own expense,
19 shall enroll and successfully complete a course(s) substantially related to the violation(s) no later
20 than the end of the first year of probation; or Respondent shall be suspended from practice, until
21 he has enrolled in and has successfully completed the specified coursework.

22 The coursework shall be in addition to that required for license renewal. The
23 Board shall notify Respondent of the course content and number of contact hours required.
24 Within thirty (30) days of the Board's written notification of assigned coursework, Respondent
25 shall submit a written plan to comply with this requirement. The Board shall approve such plan
26 prior to enrollment in any course of study.

27 Upon successful completion of the course, Respondent shall cause the instructor
28 to furnish proof to the Board within thirty (30) days of course completion.

1 10. **Maintenance of Valid License.** Respondent shall, at all times while on
2 probation, maintain an active current license with the Board, including any period during which
3 suspension or probation is tolled.

4 Should respondent's license, by operation of law or otherwise, expire, upon
5 renewal or reinstatement respondent's license shall be subject to any and all terms of this
6 probation not previously satisfied.

7 11. **Cost Recovery Requirements.** Respondent shall pay to the Board
8 pursuant to Business and Professions Code Section 125.3 the costs of enforcement in this matter
9 in the amount of \$2,645.50 (two thousand six hundred and forty-five dollars and fifty cents).
10 Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with
11 the payments to be completed no later than three months prior to the end of the probation term.
12 Failure to complete payment of cost recovery within this time frame shall constitute a violation
13 of probation which may subject Respondent's license to outright revocation.

14 The Board may conditionally renew or reinstate, for a maximum of one year, the
15 license of any respondent who demonstrates financial hardship. Respondent shall enter into a
16 formal agreement with the Board to reimburse the unpaid costs within that one year period.

17 Except as provided above, the Board shall not renew or reinstate the license of any
18 Respondent who has failed to pay all the costs as directed in a Decision.

19 12. **Violation of Probation.** If Respondent violates the conditions of his
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
21 aside the stay order and impose the stayed discipline (revocation) of the Respondent's license. If
22 during the period of probation, an accusation or petition to revoke has been filed against the
23 Respondent's license or the Attorney General's Office has been requested to prepare an
24 accusation or petition to revoke probation against the Respondent's license, the probationary
25 period shall automatically be extended and shall not expire until the accusation or petition has
26 been acted upon by the Board. Upon successful completion of probation, the Respondent's
27 license will be fully restored.

28 13. **Chemical Dependency Support/recovery Groups.** Within five (5) days

1 of the effective date of the Decision, Respondent shall begin attendance at a chemical
2 dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support
3 Group). Verified documentation of attendance shall be submitted by Respondent with each
4 quarterly report. Respondent shall continue attendance in such a group for the duration of
5 probation.

6 14. **Abstain From Controlled Substances.** Respondent shall completely
7 abstain from the personal use or possession of controlled substances, as defined in the California
8 Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of
9 the Business and Professions Code, except when lawfully prescribed by a licensed practitioner
10 for a bona fide illness.

11 15. **Abstain From Use of Alcohol.** Respondent shall completely abstain from
12 the use of alcoholic beverages during the period of probation.

13 16. **Submit Biological Fluid Samples.** Respondent shall immediately submit
14 to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There
15 will be no confidentiality in test results; positive test results will be immediately reported to the
16 Board and the Respondent's current employer.

17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and
19 have fully discussed it with my attorney, Steven Bassoff. I understand the stipulation and the
20 effect it will have on my Psychiatric Technician's license. I enter into this Stipulated Settlement
21 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
22 Decision and Order of the Board of Vocational Nursing and Psychiatric Technicians.


23 DATED: 8/16/05.

24
25 
26 MARK ALAN REILLY (Respondent)
27 Respondent

28 I have read and fully discussed with Respondent Mark Alan Reilly the terms and

1 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
2 Order. I approve its form and content.

3 DATED: 8/16/05


4
5 
6 STEVEN BASSOFF
Attorney for Respondent

7
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Board of Vocational Nursing and Psychiatric Technicians of
11 the Department of Consumer Affairs.

12
13 DATED: 8/16/05 ^{HR}

14 8/9/05 ^{HR}
15 BILL LOCKYER, Attorney General
of the State of California

16 
17 HANNAH HIRSCH ROSE
18 Deputy Attorney General

19 Attorneys for Complainant

20 DOJ Matter ID: SF2005400423
21 L12 7/14/2005
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**DECISION AND ORDER
OF THE BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS**

The foregoing Stipulation in Settlement, in Case No. T-1137, is hereby adopted as the Order of the Board of Vocational Nursing and Psychiatric Technicians for the State of California on this 19th day of December, 2005. This Decision and Order shall become effective on the 18th day of January, 2006.

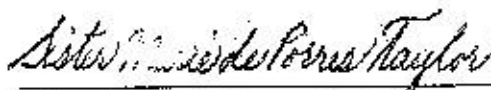

Sister Marie de Porres Taylor
President



Exhibit A

Accusation No. T-1137

1 BILL LOCKYER, Attorney General
of the State of California
2 HANNAH HIRSCH ROSE, State Bar No. 56276
Deputy Attorney General

3 Attorneys for Complainant

4 LYDIA ZANE, Senior Legal Analyst
5 California Department of Justice
455 Golden Gate Avenue, Suite 11000
6 San Francisco, CA 94102-7004
Telephone: (415) 703-5573
7 Facsimile: (415) 703-5480

8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 MARK ALAN REILLY
13 51 Winding Way
14 Napa, CA 94559

15 Psychiatric Technician License No. PT 31300

16 Respondent.

Case No. T-1137

OAH No.

ACCUSATION

17 Complainant alleges:

18 **PARTIES**

19
20 1. Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer (Complainant)
21 brings this Accusation solely in her official capacity as the Executive Officer of the Board of
22 Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about May 13, 2002, The Board of Vocational Nursing and
24 Psychiatric Technicians issued Psychiatric Technician License Number PT 31300 to Mark Alan
25 Reilly (Respondent). The license was in full force and effect at all times relevant to the charges
26 brought herein and will expire on May 31, 2007, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board of Vocational Nursing and

1 Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the
2 following laws. All section references are to the Business and Professions Code unless otherwise
3 indicated.

4 STATUTORY PROVISIONS

5 4. Section 4520 of the Business and Professions Code (Code) provides, in
6 pertinent part, that the Board may discipline any licensed psychiatric technician for any reason
7 provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code
8 § 4500, et. seq.)

9 5. Section 118(b) of the Code provides, in pertinent part, that the expiration
10 of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during
11 the period within which the license may be renewed, restored, reissued or reinstated. Under
12 section 4545 of the Code, the Board may renew an expired license at any time within four years
13 after the expiration.

14 6. Section 4521 of the Code states in relevant parts that the Board may
15 suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law] for any
16 of the following reasons:

17 "(a) Unprofessional conduct, which includes but is not limited to any of the
18 following:

19 ...

20 "(5) Use any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 8
22 (commencing with Section 4210) of Chapter 9 of Division 2, or alcoholic beverages, to an extent
23 or in a manner dangerous or injurious to himself or herself, any other person, or the public or to
24 the extent that the use impairs his or her ability to conduct with safety to the public the practice
25 authorized by his or her license.

26 "(6) Be convicted of a criminal offense involving the falsification of records
27 concerning prescription, possession, or consumption of any of the substances described in
28 paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the

1 conviction. The Board may inquire into the circumstances surrounding the commission of the
2 crime in order to fix the degree of discipline.

3 ...
4 "(f) Conviction of any offense substantially related to the qualifications,
5 functions, and duties of a psychiatric technician, in which event the record of the conviction shall
6 be conclusive evidence of the conviction. The Board may inquire into the circumstances
7 surrounding the commission of the crime in order to fix the degree of discipline."

8 7. California Code of Regulations, title 16, section 2576.6(b)(4), states:

9 "A licensed psychiatric technician shall adhere to standards of the profession and
10 shall incorporate ethical and behavioral standards of professional practice which include but are
11 not limited to the following:

12 ...
13 "(4) Abstaining from chemical/substance abuse."

14 8. California Code of Regulations, title 16, section 2578, states:

15 "For the purposes of denial, suspension, or revocation of a license pursuant to
16 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
17 act shall be considered to be substantially related to the qualifications, functions or duties of a
18 licensed psychiatric technician if to a substantial degree it evidences present or potential
19 unfitness of a licensed psychiatric technician to perform the functions authorized by his license in
20 a manner consistent with the public health, safety, or welfare.

21 9. Section 490 of the Code provides, in pertinent part, that the Board may
22 suspend or revoke a license when it finds that the licensee has been convicted of a crime
23 substantially related to the qualifications, functions, or duties of a licensed psychiatric technician.

24 10. Section 125.3 of the Code provides, in pertinent part, that a Board may
25 request the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

28 //

1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Conviction)

3 11. Respondent is subject to disciplinary action under section 4521 of the
4 Code, unprofessional conduct, and Code section 490, in that on or about December 22, 2004,
5 before the Napa County Superior Court, Case No. CR121413, respondent was convicted on his
6 plea of guilty of violating Vehicle Code section 23152(a), driving while under the influence of
7 any alcoholic beverage or drug. The circumstances are as follows:

8 a. On or about October 30, 2004, respondent was detained by the Napa
9 County Sheriff's Department for driving approximately 70 mph in a 40 mph zone. Respondent
10 submitted to a field sobriety test and a provided officers with breath samples for alcohol
11 screening. The alcohol screening indicated that respondent's blood alcohol level registered at or
12 between .114% and .117%. The legal limit for blood alcohol levels in California is .08%.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct - Substantial Relationship)

15 12. Respondent is subject to disciplinary action under section 4521(f) of the
16 Code, unprofessional conduct, and California Code of Regulations, title 16, section 2578, in that
17 respondent's conviction for driving under the influence is substantially related to the
18 qualifications, functions or duties of a licensed psychiatric technician as set forth in paragraph
19 No.11, above.

20 THIRD CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct - Use of Alcohol)

22 13. Respondent is subject to disciplinary action under section 4521(a)(5) of
23 the Code, use of alcoholic beverages to an extent or in a manner dangerous or injurious to
24 himself, any other person or the public at large, in that respondent drove his car at 70 miles an
25 hour in a 40 mile an hour speed zone, with a screened blood alcohol level of .114% to .117%, as
26 set forth in paragraph No.11, above.

27 //

28 //

1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Use of Alcohol)

3 14. Respondent is subject to disciplinary action for the violation of California
4 Code of Regulations, title 16, section 2576.6(b)(4), in that respondent failed to abstain from
5 chemical/substance abuse, as set forth in paragraph No.11, above.

6 FIFTH CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct - Conviction Involving Alcohol)

8 15. Respondent is subject to disciplinary action under section 4521(a)(6) of
9 the Code, unprofessional conduct, in that respondent was convicted of a criminal offense
10 involving the consumption of alcohol as set forth in paragraph 11, above.

11 OTHER MATTERS

12 16. Respondent has a history of arrests and/or convictions as follows:

13 a. On or about July 26, 1979, in Long Beach, California, respondent was
14 detained and later arrested by police officers for violating California Vehicle Code section
15 23102a (driving under the influence) and Vehicle Code section 20002a (misdemeanor hit and
16 run). No conviction records are available at this time.

17 b. On or about February 21, 1985, respondent was convicted on his plea of guilty
18 to the violation of Penal Code section 12031(a) (brandishing a weapon in a rude and threatening
19 manner) in Court Case No. M212224, Long Beach Criminal Court.

20 c. On or about July 27, 1989, respondent was convicted on his plea of nolo
21 contendere for the misdemeanor violation of Penal Code section 245(a)(1) (assault with a deadly
22 weapon) in Long Beach Criminal Court Case No. 19460/89M05380.

23 17. On or about February 26, 2002, in response to an agency license application
24 review, respondent wrote to the Board to explain his past arrests and/or conviction history. In
25 that letter, he admitted that he "used to drink alcoholically" and that his "troubled past stems
26 from that."

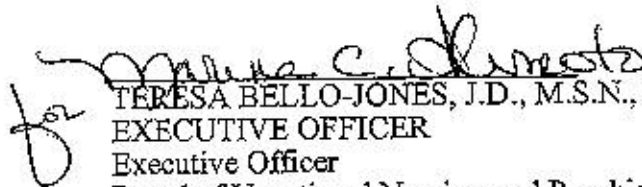
27 PRAYER

28 WHEREFORE, Complainant requests that a hearing be held on the matters herein

1 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
2 Technicians issue a decision:

- 3 1. Revoking or suspending Psychiatric Technician's License Number PT
4 31300, issued to Mark Alan Reilly.
- 5 2. Ordering Mark Alan Reilly to pay the Board of Vocational Nursing and
6 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
7 pursuant to Business and Professions Code section 125.3;
- 8 3. Taking such other and further action as deemed necessary and proper.

9 DATED: June 9, 2005

10
11 
12 TERESA BELLO-JONES, J.D., M.S.N., R.N.,
13 EXECUTIVE OFFICER
14 Executive Officer
15 Board of Vocational Nursing and Psychiatric Technicians
16 Department of Consumer Affairs
17 State of California
18 Complainant

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